



IRS Nationwide TaxForum | 2019

When Does a Rental Generate Qualified Business Income?

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The 20% QBI Deduction

- 20% of qualified business income (limitations may apply)
- Any trade or business income except
 - Specified service trade or business
 - Trade or business of being an employee



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The Big Question...

- Is my rental activity a trade or business?





Reg. §1.199A-1(b)(14)

- Trade or business means a §162 trade or business
- Facts and circumstances
- No bright-line test



Case Law on §162

- Higgins (1941)
 - Is there a profit motive?
- Groetzinger (1987)
 - Considerable, regular and continuous



IRS on §162 Factors (2019)

- Type of property
- Number of properties
- Day-to-day involvement
- Services provided
- Terms of lease

Safe Harbor (Notice 2019-07)

Solely for §199A:

- Separate books and records
- 250 or more hours of rental services
- Contemporaneous records of time (except for 2018)



Safe Harbor vs. §162

- *“Failure to satisfy the requirements of this safe harbor does not preclude a taxpayer’s rental real estate activities from being a §162 trade or business.”*



“Rental Services”

- Advertising
- Negotiating & executing leases
- Vetting tenant applications
- Rent collection

**Work by owner, agent, employees, contractors
may be combined**



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“Rental Services” continued

- Operation, maintenance & repairs
- Management
- Materials purchase
- Supervising workers

**Work by owner, agent, employees, contractors
may be combined**



Getting to 250 Hours

- By default, each property is a separate Real Estate Enterprise
- By election, we may aggregate our “Real Estate Enterprise(s)” How?
- Can’t combine commercial & residential



Excluded RE Activities

- Real estate used by the taxpayer for any part of the year
- Triple net leases



Safe Harbor Statement

“Under penalties of perjury, I (we) declare that I (we) have examined the statement, and, to the best of my (our) knowledge and belief, the statement contains all the relevant facts relating to the revenue procedure, and such facts are true, correct, and complete.”



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Wrap-Up



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